IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2198 of 1988
With
SPECIAL CIVIL APPLICATION No. 4090 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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KHEDA JILLA PANCHAYAT SANITARYINSPECTORS & VACCINATORS ASSN - Petitioner
Versus
STATE OF GUJART & 6 - Respondents

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Appearance :

1. Special Civil Application No. 2198 of 1988
MR DIPAK C RAVAL for Petitioner.
MR LB DABHI, AGP for Respondent Nos. 1 - 3.
MR IQBAL M MALIK for Respondent No. 4.

MR JF SHAH for Respondent(s) : 5 – 7.

2. Special Civil Application No. 4090 of 1991
MR UM DHOTRE for petitioners.
MR LB DABHI, AGP for respondent Nos. 1 & 3.
MR HS MUNSHAW for respondent No. 2.
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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 18/01/2006

COMMON ORAL JUDGMENT

1.Special Civil Application No. 2198 of 1988 is filed by Kheda Jilla Panchayat Sanitary Inspectors & Vaccinators Association through its President praying for quashing and setting aside the orders dated 30.08.1986 and 17.08.1987 passed by the District Development Officer, Kheda District Panchayat, Nadiad. The petitioner association has also prayed for consideration of the case of its members who are working in the cadre of Multi-purpose Health Supervisor for promotion to the post of Block Extension Educator, from the date on which any of their juniors or subordinates were

promoted, after the statutory Rules dated 19/31.08.1986 came into force. The petitioner association has also prayed for the declaration that the impugned Rules, namely, Gujarat Panchayat Services (Classification and Recruitment) Rules, 1967 produced at annexure F to the petition are illegal, unconstitutional, null, void and of no effect whatsoever and to restrain the respondent authorities from giving promotion to the Field Workers to the higher post of Block Extension Educators, pursuant to the said Rules. An alternative prayer is also made to the effect that the said rules may be declared as illegal, unconstitutional, null and void and of no effect whatsoever.

2.Special Civil Application No. 4090 of 1991 is filed by two petitioners working as Multi Purpose Health Supervisors praying for the similar relief, namely, for quashing and setting aside the action of the respondents

promoting a Field Worker (Multi Purpose Health Workers) to the higher post of Block Extension Education ignoring the legitimate and valid claim of the petitioners and also prayed for the declaration that the action on the part of the respondents in promoting the Field Worker/Multi Purpose Health Worker to the next higher post of Block Extension Educator, bypassing the petitioners is in violation of Articles 14 & 16 of the Constitution of India. The petitioners have also prayed for quashing and setting aside the impugned Rules, namely, Gujarat Panchayat Services (Classification and Recruitment) Rules, 1967.

3.In Special Civil Application No. 2198 of 1988, notice was issued on 03.05.1988 and ad-interim relief was granted in terms of para 10 of the petition whereby the respondents were restrained from further promoting any erstwhile field Worker working in the cadre of Multi

Purpose Health Worker to the higher post of Block Extension Educator. The petition was admitted and rule was issued on 19.12.1988 and ad-interim relief granted earlier was vacated. The Court has observed that it would be open to the authorities to promote Field Workers in accordance with rules subject to the result of the petition. The petition was ordered to be heard along with Special Civil Application No. 3130 of 1988.

4.Similarly, Special Civil Application No. 4090 of 1991 was admitted and rule was issued on 26.06.1991. Ad-interim relief was granted in terms of para 19 (E) of the petition whereby the respondents were restrained from promoting the Field Workers to the next higher post of Block Extension Educator. The said ad-interim relief was modified on 11.02.1992 by permitting the respondents to fill in the post of Block Extension Educator subject to condition that

two posts shall be kept vacant and appointment/promotion shall be subject to the result of the petition.

5.It is worthwhile to note here that though both these petitions were ordered to be heard along with Special Civil Application No. 3130 of 1988, for the reasons not known to the Court, the said two petitions were separated and Special Civil Application No. 3130 of 1988 was disposed off by this Court on 26.03.1991. The said petition was filed by the Field Workers Association and prayer was made therein to promote the members of the petitioner association to the post of Block Extension Educator and the association has also challenged the letter dated 05.05.1988 by which the respondent was directed not to give promotion to the Field Workers. On behalf of the respondents, a statement was made before the Court that the said letter has been

withdrawn. The Court, therefore, expressed hope that the respondents would give promotion to the members of the petitioner association to the post of Block Extension Educators in accordance with law. The Court has further held that as the impugned letter dated 05.05.1988 was withdrawn, the petition has become infructuous and, therefore, the same was disposed off accordingly.

6.It is the case of the petitioners in both these petitions that the post of Multi Purpose Supervisors includes (a)Vaccination Supervisors (b) Sanitary Inspectors and (c) Malaria Surveillance Inspector. The employees working in the cadre of Vaccination Supervisors and Sanitary Inspectors are holding the supervisory post over the employees working in the lower cadre known as Multi Purpose Worker. The cadre of Multi Purpose Worker includes (a) Vaccinator, belonging to Sanitary Inspectors'

Cadre and (b) Field Worker belonging to F.P. Cadre and (c) Malaria Surveillance Investigator. It is also the case of the petitioners that the Govt. has taken an absolutely arbitrary policy decision whereby the subordinates of the petitioners working as Field Workers were sought to be promoted to the cadre of Block Extension Educator, which was a post higher than the members of the petitioner association i.e. Vaccination Supervisors and Sanitary Inspectors.

7. In the year 1965-66, the Govt. of India accepted what is popularly known as UNICEF pattern. Under this pattern, the Primary Health Centres, whether run by the State Government or the Panchayat authorities were under a Medical Officer. The Medical Officer was assisted by one Sanitary Inspector, one Health Inspector, one Malaria Surveillance Inspector and one Block Extension Educator. The services under

the Medical Officer were divided into three sections, namely, (i) Public Health Centre which included Public Sanitation and Vaccination Schemes; (ii) Mother and Child Health care scheme which included programmes of immunition and other Mother and Child Welfare. This work was mainly done by Auxiliary Nurses and Midwives; (iii) Family Welfare Programme under the Block Extension Educator, who educated people with the help of Field Workers about the Family Programme. There was also a Malaria Eradication Programme which was under the State Government authorities and which was manned by the Malaria Surveillance Inspectors.

8.This UNICEF pattern was resulted in over-lapping of services and in lot of inconveniences in rendering services as well as in administration. In the year 1977-78, the Govt. of Gujarat adopted a scheme known as 'Multi Purpose Health Workers' Scheme'. By

Circular dated 15.02.1977, it was prescribed that with a view to giving “better health care in an integrated manner, the Govt. has decided to implement the multi-purpose worker Scheme in the State. Accordingly, it was proposed to create a common pool of different workers under this Scheme. The first layer was 'Multi Purpose Worker' which included employees of three categories, namely, (a) Vaccinator, belonging to Ex-Sanitary Inspector Cadre; (b) Malaria Surveillance Investigator, belonging to Malaria Cadre; and (c) Field Worker, belonging to Family Planning Cadre. All these three categories were formerly in the pay scale of Rs. 260 – 400 (Unrevised). They were integrated into one common cadre known as Multi Purpose Worker in the pay scale of Rs. 260-400 (Unrevised). The three different cadres which were merged in the cadre of Multi Purpose Worker were supposed to be supervised by the higher cadre of Multi Purpose Supervisor in the

cadre of Rs. 330 – 560 (Unrevised). Once again, the cadre of Multi Purpose Supervisor was created by the merger of three categories of employees formerly known as (a) Vaccination Supervisor (b) Malaria Surveillance Inspector and (c) Sanitary Inspector. Above this Supervisory Cadre, there was still a higher cadre known as Block Extension Educator in the pay scale of Rs. 425 – 700 (Unrevised). Above Block Extension Educator, there was only Medical Officer, Class II.

9. It is also the case of the petitioners that Multi Purpose Worker and Multi Purpose Supervisor pattern created by the Circular of 15.02.1977 had solved one problem but allowed another anomaly to remain as to the channel of promotions. The anomaly created by the Circular dated 15.02.1977 was realised and removed by the Govt. by the revised statutory Recruitment Rules published on 06.05.1981. By the aid of

statutory rules framed under Article 309 of the Constitution of India, Multi Purpose Health Worker (Health and Family Welfare Division) Recruitment Rules, 1981 were framed. Under these Rules, it was prescribed that a person to be selected for the post of Multi Purpose Health Worker must have passed the Sanitary Inspectors' Examination and must have successfully taken six months' training of Family Planning Assistant. He must have also completed 1 and ½ years training of Multi Purpose Health Worker. After these Rules were framed, the Director of Health & Medical Services (Health & Services) has issued a Circular dated 31.08.1981 pointing out that the anomaly in the recruitment rules of various cadres which were merged in the Multi Purpose Health Worker was now removed and that all the three cadres which were working as Multi Purpose Health Worker were subject to same rules and regulations as framed by Notification

dated 06.05.1981. It is, therefore, submitted that the pattern that emerged was that at the beginning, there was Multi Purpose Health Worker, above him there was Multi Purpose Health Supervisor and above him, there was still one higher cadre known as Block Extension Educator. Despite this fact, by an order dated 30.08.1986, the D.D.O., Kheda District Panchayat, Nadiad filled in certain posts of Block Extension Educator by promotion from the post of Field Workers. These promotions were given on provisional and temporary basis subject to approval by the Gujarat Panchayat Services Selection Board. The D.D.O., thereafter passed another order on 17.08.1987 giving promotions to the Field Workers to the post of Block Extension Educator. These are the two orders which are under challenge in these petitions.

10.Mr. D.C. Raval, learned advocate appearing for

the petitioner association has submitted that three separate cadres of Vaccinator, Malaria Surveillance Investigator and Field Worker were merged into a common cadre of Multi Purpose Health Worker as back as in February, 1977. Similarly, the next higher post in the Supervisory cadre known as Multi Purpose Health Supervisor was constituted afresh by merging of three separate cadres formerly known as Vaccination Supervisor, Malaria Surveillance Inspector and Sanitary Inspector. Once these different cadres were merged and the new cadres came into being, the original constituents which constituted the merged cadres could not be favoured or discriminated against on the basis of their original birth mark at the time of entry in service. The said action of the respondent authorities in promoting the Field Workers to the post of Block Extension Educator was favoured in the matter of promotion at the cost of other two constituents of the same

cadre and at the cost of the personnel of the Supervisory cadre on the ground that they were originally not working as Field Workers. It is clearly discriminatory, arbitrary and violative of Arts. 14 & 16 of the Constitution of India. The said action of the respondent authorities is absolutely irrational and deserves to be vitiated by non-application of mind. He has further submitted that the persons who were originally Field Workers were unqualified to be even Multi Purpose Health Workers in as much as they did not possess the qualification of Sanitary Inspector nor have they taken training in Family Planning for a period of six months or the training as Vaccinator, nor have they undertaken the training as a Multi Purpose Health Worker. They have been continued in service simply because the 1981 Rules could not apply to the Field Workers who are already recruited under the old Rules.

11.Mr. Raval has further submitted that the respondent authorities were conscious of the anomaly created by this kind of absurd practice. The representations made by the petitioner association also made the respondent authorities realized that something was wrong and hence, opinion of all the D.D.Os. In the State of Gujarat were sought for and they have opined that this anomaly could be rectified by providing that a Multi Purpose Health Worker could be promoted to the post of Multi Purpose Health Supervisor and the Multi Purpose Health Supervisor could in turn be promoted to the higher post of Block Extension Educator. Precisely for this reason, letter dated 05.05.1988 was issued by the Director of Health & Medical Services & Medical Education (Health Section), Gandhinagar directing all D.D.O. to stop the promotion of Field Workers to the post of Block Extension Educator or Health Educator in new Primary Health Centres immediately. He

has also made it very clear that any promotion from the post of Field Worker to the post of Block Extension Educator or Health Educator henceforth would be viewed very seriously.

12.In Special Civil Application No. 2198 of 1988, An affidavit-in-reply was filed by the respondent No. 4 on 11.08.1988. An affidavit-in-reply was filed on behalf of the Commissioner of Health on 12.10.2004 and further affidavit-in-reply was filed on 09.01.2006.

13.Similarly, in Special Civil Application No. 4090 of 1991, a detailed affidavit-in-reply was filed on behalf of the Banaskantha Dist. Panchayat.

14.Mr. L.B. Dabhi, learned Assistant Government Pleader appared on behalf of the State Government in both these petitions. Mr. H.S.

Munshaw, learned advocate appeared for Banaskantha Dist. Panchayat in Special Civil Application No. 4090 of 1991.

15.The sum and substance of all these reply as well as the submissions of Mr. Dabhi and Mr. Munshaw is that the Vaccinators and Sanitary Inspectors are working under the Health department whereas the Field Workers are working under the Family Planning Department. Therefore, all the three cadres are independent cadres working independently under their respective heads. Even all the three cadres have to prepare reports and gather particulars separately and have to submit separately to their superiors. The Directors are also different for all the departments. The health department of the Panchayat service is to be managed by District Health Officer whereas the Family Planning Department is to be managed by District Family Planning Medical Officer. The

Multi Purpose Workers Scheme came into force in the year 1977, was only for an experimental basis and which was to be implemented in the phased manner, just to have experiment and during that period, the promotions to all these three cadres were given to their respective recruitment rules. The nature of work is also quite different. The vaccinators and Sanitary Inspectors have to perform their duties for better health care whereas Field Workers have to go to the field and convince the people for the benefit of the Family Planning Programme and collect the bio-data and have to work as Supervisory nature.

16.He has further submitted that there was no policy decision of the Govt. to promote Field Workers as Block Extension Educator. As a matter of fact, Field Workers and Block Extension Educators belong to the Panchayat Service. There are already statutory rules for

both these posts as contained in Gujarat Panchayat Service (Classification and Recruitment) Rules, 1967 as modified from time to time. These rules have been enacted by Govt. of Gujarat in exercise of the powers vested in it by Section 323 of the Gujarat Panchayat Act, 1967. The appointing Authority under the Rules is, therefore, competent to make appointment pursuant to these Rules. The post of Block Extension Educator was not included in the common pool formed by Resolution dated 15.02.1977 and hence, the apprehension voiced by the petitioners that the Field Workers who were promoted as Block Extension Educators would become their superiors was ill-founded and baseless. The Circular dated 15.02.1977 itself makes it clear that the purpose was only to bring the workers (and not posts) into a common pool (as distinct from a common cadre). In this Circular, the workers brought into the common pool have continued to get promotion in

their respective cadre. It is only because of these facts that the Vaccinators and Sanitary Inspectors got promotion in their own cadre upto the post of School Health Inspectors and Epidemiologist-Cum-Sanitary Supervisors and the Malaria Surveillance Workers got promotion in their cadre upto the post of Malaria Supervisor and Asst. Dist. Malaria Officer. For the purpose of creating a common cadre of Multi Purpose Health Worker, a uniform set of Recruitment Rules was necessary and it is only for this purpose, the Recruitment Rules dated 06.05.1981 have been published. These Rules were prospective and it was made clear therein that existing as well as future vacancies should be filled in as per new Rules. These rules have not been implemented as the department has still not arranged conducting one and half years training for Multi Purpose Health Workers as per Rule 3(3)(C) of the Rule of 06.05.1981. It is further submitted that

the petitioners were not actually appointed as Multi Purpose Health Supervisors. But their services were drawn from their respective cadres to create a new cadre of Multi Purpose Health Supervisors. They have continued to get promotional benefits in their respective cadres to which they belong. The promotional avenues for the Vaccinators are as follows :- The Vaccinators in the pay scale of Rs. 250 – 400 get promotion as Sanitary Inspector in the pay scale of Rs. 380 – 500 and Sanitary Inspectors get promotion as Senior Sanitary Inspector in the pay scale of Rs. 425 – 700. The Recruitment Rules for the post of Vaccinators have been published on 21.09.1972. Thereafter for promotion of Vaccinators to the post of Sanitary Inspectors, Recruitment Rules were published on 21.09.1972. Similarly for promotion of Sanitary Inspectors to the post of Senior Sanitary Inspectors, the Recruitment Rules were published on 14.04.1972. From these

Rules, it is clear that a Vaccinator cannot be appointed as a Block Extension Educator because for the Block Extension Educator, the feeder cadre is Field Worker. The Recruitment Rules to the post of Field Workers have been published on 18.09.1968. The promotional avenues for the incumbents working as Field Workers are that the Field Workers working in the pay-scale of Rs. 260-400 get promotion to the post of Block Extension Educator and the Block Extension Educators working in the pay scale of Rs. 425-700 get promotion to the post of District Extension Educator in the pay scale of Rs. 550 – 900. Thus, a mere look at the promotional avenues as stated above reveals that the Field Workers are entitled to get promotion as Block Extension Educator and none else. The Block Extension Educators are entitled to the post of District Extension Educators. He has, therefore, submitted that the members of the petitioner Association who

have not worked in the feeder cadre of Field workers are not entitled to the promotion for the post of Block Extension Educators.

17.It is further submitted that Circular dated 15.02.1977 makes it clear that Vaccination Supervisor's post belongs to the grouping “Multi Purpose Supervisors” and they cannot be promoted to the post of Block Extension Educator as per the recruitment rules. It is only the Field Workers who are entitled to get promotion as Block Extension Workers and, therefore, the claim of the petitioner association cannot be accepted. The scheme has been introduced by the State Government and all the existing three posts, namely, Vaccinators belong to Ex-Sanitary Inspectors cadre, Malaria Surveillance Investigators belong to Malaria cadre and Field Workers belong to family planning cadre were integrated into one common cadre as Multi Purpose Workers. It is

made clear in the scheme itself that they are not Multi Purpose Workers because post of Multi Purpose Workers came into existence by recruitment rules of Medical and Health Worker by Notification dated 06.05.1981 and these rules have been amended by Notification dated 23.04.2003. The three other posts, namely, Vaccinators, Malaria Surveillance Investigators and Field Workers have been integrated as Multi Purpose Workers which is merely enumerated, but actually they are not on the post of Multi Purpose Workers or Multi Purpose Health Supervisors. The post of Multi Purpose Health Supervisor has been established in 1990 and for this purpose, recruitment rules have been framed on 21.06.1990. These rules provide for regulating recruitment to the post of Multi Purpose Health Supervisor in getting the public health services. The recruitment rules for Multi Purpose Health Supervisor, Class III (Panchayat Service) had been notified on

08.04.2004. In the above view of the matter, the relevant Notification is the Notification dated 15.02.1977 wherein it is categorically stated that the persons whose services for constituting the pool shall continue to get promotion to the respective cadres and the said order will not affect the channel of their promotion. It is, therefore, submitted that the petitioners are not entitled for any claim or any other relief made in the present petition and the present petition deserves to be dismissed.

18.After having heard learned advocates appearing for the respective parties and after having gone through the memo of the petition, affidavit and counter affidavit and after having gone through various Circulars, Resolutions, Notifications etc. produced before the Court, the Court is of the view that the petitioners are altogether in different cadre

and they are not eligible for the promotion to the post of Block Extension Educator. The rules framed in different cadres make it clear that there are different cadres of Field Workers, Vaccinators and Malaria Surveillance Workers under the family planning, health division and malaria division respectively. The recruitment rules are also different for all the three cadres. Even the seniority lists are also separately maintained and the channel of promotion is also different. The posts of Field Workers and Block Extension Educators are under the family planning division while the posts of Vaccinator Supervisor are under the health division and the posts of the Malaria Surveillance Worker and Malaria Supervisor Inspector are under the malaria division. The reporting Officers are also different in all the three cadres. In the family planning division, the highest authority is Additional District Health and Family Planning Officer.

In the case of Vaccinator and others, it is District Health Officer and in the case of Malaria Surveillance Worker, Malaria Division, it is the District Malaria Officer. The seniority lists for all the three cadres are separately maintained and as per the recruitment rules, the promotions to the higher posts are given relying upon the said seniority lists to the respective higher posts. It has also come on record that the petitioners who have joined health branch as Vaccinators were also promoted to the post of Vaccinator Supervisor and Sanitary Inspector. Even after creation of Multi Purpose Health Workers' Scheme, old schemes are continued and the rules and regulations for the recruitment and promotions are not at all changed. The post of Block Extension Educator is not included in the common pool of Multi Purpose Health Worker. It is also an admitted position that the letter dated 05.05.1988 issued by the Director of

Health and Medical Services & Medical Education (health section) stating that promotion of Field Worker to the post of Block Extension Educator is not proper and is not in line of justice, was subsequently withdrawn by letter dated 12.05.1989. It is also made clear vide letter dated 10.12.1990 that since the letter dated 05.05.1988 has been withdrawn by another letter dated 12.05.1989, the status-quo ante was restored and the Field Workers were allowed to be promoted as Block Extension Educators / Health Educators as per the prevailing recruitment rules. In view of this subsequent letter, the petition filed before this Court being Special Civil Application No. 3130 of 1988 by the Field Workers Association was withdrawn. Since the recruitment rules for all the three categories are different and despite the fact that these three different categories were merged into a common pool, the same was not implemented and since the earlier

respective rules are still continuing, the Court does not see any justification to show any indulgence in any of these two petitions and grant the relief as prayed for. The petitions are, therefore, dismissed. Rule is discharged in each of these two petitions without any order as to costs. Interim relief, if any, stands vacated.

[K.A. PUJ, J.]

S*avariya*